

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Americus and Emporia, Kansas)

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MB Docket No. 05-139
RM-11218

**NOTICE OF PROPOSED RULE MAKING
AND
ORDER TO SHOW CAUSE**

Adopted: March 21, 2005

Released: March 23, 2005

Comment Date: May 10, 2005

Reply Date: May 25, 2005

By the Assistant Chief, Audio Division:

1. The Audio Division has before it for consideration a Petition for Rule Making filed by Dana J. Puopolo ("Puopolo"). Puopolo proposes the allotment of Channel 240A at Americus, Kansas, as that community's first local service. In order to accommodate the allotment of Channel 240A at Americus, Puopolo further proposes the substitution of Channel 244A for Channel 241A, Emporia, Kansas, at the existing reference coordinates, and he commits to compensate the licensee for expenses incurred in moving from Channel 241A to Channel 244A.¹ Puopolo states that, should the Commission grant the allotment of Channel 240A at Americus, he will file the necessary applications and take all necessary actions to construct the facilities for that new station.

2. Americus is an incorporated city with a population of 938 persons. The proposed substitution of Channel 244A for Channel 241A at Emporia, Kansas, would not create a change in the service provided nor in the coordinates for the transmitter site. There are no interference conflicts with the proposed substitute channel at the current licensed site.² This proposal warrants consideration because it complies with our technical requirements and could serve the public interest.

3. The proposed allotment at Americus and the channel substitution at Emporia can be made with the site restrictions and reference coordinates indicated below. Accordingly, we seek comment on the proposed amendment of the FM Table of Allotments, 47 C.F.R. Section 73.202(b), with respect to Americus, Kansas, and Emporia, Kansas:

¹ Puopolo refers to the call sign for Channel 241A at Emporia, Kansas, as KRWV, but the current call sign is KANS; accordingly, throughout this *Notice of Proposed Rule Making and Order to Show Cause*, we refer to that facility as Station KANS(FM).

² The coordinates for Emporia would not change under petitioner's proposal. They are 38-24-21 NL and 96-14-13 WL.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Americus, Kansas	---	240A
Emporia, Kansas	241A	244A

Proposed Coordinates for Channel 240A at Americus, Kansas: 38-25-13 NL and 96-21-12 WL, at a site 12.5 km (7.8 miles) southwest of Americus.

Proposed Coordinates for Channel 244A at Emporia, Kansas: 38-24-21 NL and 96-14-13 WL, at a site 4.9 km (3.0 miles) west of Emporia (current licensed site).

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached *Appendix* and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the *Appendix* before a channel will be allotted.

5. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules,³ interested parties may file comments on or before May 10, 2005, and reply comments on or before May 25, 2005, and are advised to read the *Appendix* for the proper procedures. Comments should be filed with the Federal Communications Commission. Additionally, a copy of any filing should be served on Puopolo, as follows:

Dana J. Puopolo
2134 Oak Street, Unit C
Santa Monica, California 90405

6. Parties must file an original and four paper copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. **All filings must be addressed to Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary. Any filing that is not addressed to the Office of the Secretary will be treated as filed on the day it is received in the Office of the Secretary. See 47 C.F.R. § 1.7. Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.**

³ See 47 C.F.R. §§1.415 and 1.419.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.⁴ This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198.⁵

8. For further information concerning this proceedings, contact Deborah A. Dupont, Media Bureau, at (202)418-7072. For purposes of these restricted notice and comment rule making proceedings, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in the particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the Petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

11. In order to proceed with our analysis of the proposals set forth in the Petition for Rulemaking and to resolve this proceeding, it is further necessary to issue an *Order to Show Cause* directed to C & C Consulting, Inc., to show cause why its Station KANS(FM) license should not be modified to specify operation on Channel 244A in lieu of Channel 241A at Emporia. Section 316(a) of the Communications Act of 1934, as amended, permits us to modify a license or construction permit if such action is in the public interest. Section 316(a) requires that we notify the affected stations of the proposed action, the public interest reasons for the action, and afford at least 30 days to respond. This procedure is now set forth in Section 1.87 of the Commission's Rules.⁶ In this instance, the substitution of Channel 244A at Emporia will accommodate the allotment of Channel 240A at Americus, making possible a first local service for Americus, Kansas. The substitution proposed in this proceeding thus will result in a net gain in service. We consider these to be significant public interest benefits.

⁴ See *Certification that Section 603 and 604 of the Regulatory Flexibility Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 Fed.Reg. 11549 (February 9, 1981).

⁵ See 44 U.S.C. 3506(c)(4).

⁶ See *Modification of FM and Television Licenses Pursuant to Section 316 of the Communications Act*, 2 FCC Rcd 3327 (1987).

12. The Station KANS(FM) license at Emporia can be modified to specify operation on Channel 244A at its currently authorized transmitter site. The petitioner has agreed to reimburse the licensee of Station KANS(FM), Channel 241A, Emporia, Kansas, for the reasonable costs incurred in connection with the change.

13. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, C & C Consulting, Inc., licensee of Station KANS(FM), Channel 241A, Emporia, Kansas, SHALL SHOW CAUSE why its license should not be changed to specify operation on Channel 244A in lieu of Channel 241A.

14. Pursuant to Section 1.87 of the Commission's Rules, C & C Consulting, Inc., may, no later than May 10, 2005, file a written statement showing with particularity why its license should not be modified as proposed in this *Order to Show Cause*. The Commission may call upon the licensee to furnish additional information. If the licensee raises a substantial and material question of fact, a hearing may be required to resolve such questions of fact pursuant to Section 1.87 of the Rules. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, the licensee will be deemed to have consented to a modification as proposed in this Order to Show Cause and a final Order will be issued if the modification is found to be in the public interest.

15. IT IS FURTHER ORDERED, That a copy of this Notice of Proposed Rule Making and Order to Show Cause shall be sent BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to the following:

C & C Consulting, Inc.
1811 W. Sixth Avenue
Emporia, Kansas 66801
(Licensee of Station KANS(FM), Channel 241A, Emporia, Kansas)

Dan J. Alpert
2120 North 21st Road
Arlington, Virginia
(Counsel for C & C Consulting, Inc.)

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau

APPENDIX

1. Pursuant to authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS PROPOSED TO AMEND the FM Table of Allotments, 47 C.F.R. Section 73.202(b), as set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments (*see* 47 C.F.R. Section 1.420(d).)

(b) Petitions for rule making which conflict with the proposals in this *Notice* will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; service. Pursuant to applicable procedures set out in 47 C.F.R. Sections 1.415 and 1.420, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the Puopolos. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments (*see* 47 C.F.R. Section 1.420(a), (b) and (c).) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of 47 C.F.R. Section 1.420, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.